



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2021/A/7866 Taras Durai v. Ukrainian Association of Football**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Mr Espen Auberg, Attorney-at-Law, Oslo, Norway

**in the arbitration between**

**Mr Taras Durai, Ukraine**

Represented by Ms Ganna Gnizdovska, Attorney-at-Law with Juris Ferrum, Odessa, Ukraine

**- Appellant -**

and

**The Ukrainian Association of Football, Ukraine**

Represented by Mr David Casserly and Mr Anton Sortir, Attorneys-at-Law with Kellerhals Carrard, Lausanne, Switzerland

**- Respondent -**

## **I. PARTIES**

1. Mr Taras Durai (the “Appellant or the “Player”) is a former professional football player of Ukrainian nationality born in 1984.
2. The Ukrainian Association of Football (the “Respondent” or the “UAF”) is Ukrainian football's governing body, and a member of the Union of European Football Associations (“UEFA”) and the Fédération Internationale de Football Association (“FIFA”).
3. The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties,<sup>1</sup> and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a summary of the dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

### **A. Background Facts**

5. This case concerns an appeal of a decision rendered by UAF’s Appeals Committee issued 1 December 2020, where the Player was found guilty of having violated the UAF Code of Ethics and the UAF Disciplinary Rules regarding match-fixing, and banned from football related activities for a period of three years.
6. The Player was registered as a professional football player with the Ukrainian football club FC Sumy twice, during both of which FC Sumy participated in the Ukrainian second tier division (the “PFL). First, he was registered with FC Sumy from April 2013 until July 2014. In July 2014, he signed a contract with the Ukrainian club Nyva Ternopil where he stayed until March 2016. After a spell in Belarus football between March 2016 and July 2017, he returned to FC Sumy on 11 September 2017 where he was registered until July 2018.
7. On 2 September 2015, the UAF Disciplinary Committee concluded that the match between Nyva Ternopil and FC Ternopil, held on 16 November 2014, in which the Player participated, had been manipulated. Both clubs were sanctioned with a three-point deduction and a fine. On 26 November 2015, the UAF Disciplinary Committee issued a decision fining the Player.
8. In July 2018, the UAF appointed an expert group (the “UAF Expert Group”) whose mandate was to evaluate football players’ actions on the pitch in matches that were

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<sup>1</sup> Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of efficiency, they are not all identified with a “[sic]”.

reported by the UEFA Betting Fraud Detection System (“BFDS”) and Federbet, an international non-profit anticorruption organisation based in Belgium that aims to represent the interests of all the operators and consumers in the gaming sector. The members of the UAF Expert Group were given access to footage of the relevant matches and were asked to give their opinion and to establish whether the players’ actions were suspicious for the purposes of match-fixing.

9. Between July 2018 until November 2018, the UAF Expert Group issued four reports in which it gave its opinions with regard to four matches that involved FC Sumy.
10. On 17 July 2018, the UAF Expert Group issued Opinion No. 08/18 with respect to the match FC Sumy v. FC Desna Chernigiv played on 22 April 2018. The Player was in the starting line-up and played the whole match. The Player’s performance in the match is described in the report, which concludes:

*“1. The football players of FC «Sumy» Sumy, including but not limited to, (...) [the Player] (...) during the match of the first League of the Football Championship of Ukraine, the 29th round of the 2017/2018 season FC «Sumy» Sumy - FC "Desna" Chernihiv, which took place on 22.04.2018 at the stadium Jubilee Sumy, violated p.p. 2,3,3.1,5 of the Code of Ethics and Fair Play.*

*2. The actions of the players of FC «Sumy» Sumy, mentioned in item 1 above, bear the signs of violations provided for in article 2 paras. 16, 20 of the Disciplinary Rules of the Football Federation of Ukraine.”*

11. In the three other reports that were issued by the UAF Expert Group in October 2018 and November 2018, the UAF Expert Group concluded that football players of FC Sumy violated the UAF Code of Ethics and Fair Play in three matches played on 5 August 2018, 18 August 2018 and 31 August 2018, and that there were signs that players of FC Sumy violated the UAF Disciplinary Rules. The Player did not participate in these matches.
12. On 1 November 2018, the UAF Ethics and Fair Play Committee (the “UAF Ethics Committee”) received a letter from the General Prosecution Office of Ukraine containing a police report on the investigation conducted with respect to the involvement of FC Sumy and its players in match-fixing. The preamble of the letter states inter alia:  
  
*“During the pre-trial investigation, public (obtaining information on inquiries, interrogations, inspection reports of mobile phones and equipment) and secret (recording of information from transport telecommunications networks, visual observations (surveillance), etc.) investigative (search) actions were carried out, which at the moment do not have a secrecy stamp and are fully legalized.*

*During a set of such investigative (search) actions, information was obtained about citizens of Ukraine who organized work in PFC "Sumy" in order to earn money in "fixed" matches."*

13. Further, the letter from the General Prosecution Office of Ukraine describes, inter alia, as follows:
  - On 4 April 2018, Mr Kozar Rostyslav Ihorovych, who was the owner of FC Sumy, made arrangements to ensure that during the match between FC Poltava and FC Sumy that was to be played on 6 April 2018, the match referee would assist FC Sumy to win or draw. When the match was played two days later, the Player played the whole match.
  - On 22 April 2018, the club director of FC Sumy, Mr Kozlenko Volodymyr Anatoliiovych (referred to as "V. Kozlenko" in the letter), had a phone conversation with one of the Club's players, Mr Lugovyy Yehor Serhiiiovych (referred to as "Ye. Luhovyi" in the letter), with respect to the match between FC Sumy and FC Desna scheduled to be played the same evening. The letter states that in the phone conversation it was confirmed that there was an agreement to manipulate the match, and that the Player knew of the agreement. When the match was played later that evening, the Player played the whole match.
  - On 26 April 2018, Mr Lugovyy contacted Mr Kozlenko and said that the club owner and manager Mr Kozar Rostyslav Ihorovych (referred to in the letter as "R. Kozar") had sent him UAH 100,000 for losing the match against FC "Desna" four days earlier. When asked how the money would be divided, Mr Lugovyy replied that he, "Baha" (Mr Dmytro Bohachov) and "Vecha" (Mr Mykola Vechurko) would receive UAH 23,000 each, and "Tsyka" (Mr Iraklii Tsykoliia) and the Player would receive UAH 15,000 each. Later, three bank transfers were linked to the conversation: a transfer of UAH 100,000 from Mr Kozar to Mr Lugovyy; a transfer of UAH 23,000 from Mr Lugovyy to Mr Vechurko; and a transfer of UAH 12,000 from Mr Lugovyy to Mr Tsykoliia. The letter states that "*The money was transferred to other players only in cash.*"
  - Prior to the match between FC Sumy and FC Rukh played on 14 April 2018, Mr Kozar made arrangements to ensure that the referee of the match would assist FC Sumy to secure the win. One player and a coach of FC Sumy were told that the referee would be helping them. When the match was played on 14 April 2018, the Player played the whole match.
  - In connection with the match between FC Sumy and FC Volyn played on 1 April 2018, the referee of the match confessed that before the match he had been promised that he would receive money for ensuring a win for FC Sumy, and that after the match he had received USD 3,900 from Mr Kozar.
14. On 14 November 2018, the UAF Ethics Committee issued a report with respect to the involvement of FC Sumy in match-fixing. The Ethics Committee conducted an investigation following receipt of a number of reports from the UEFA BFDS and Federbet. In its report, the UAF Ethics Committee concluded that at least 14 matches

between 2013 and 2018 involving FC Sumy had been manipulated. In its report, the UAF Ethics Committee stated as follows:

*“After analysing the available materials, the Committee concluded that the actions of the owner of FC «Sumy» Sumy, related persons, individual players, as well as the head coach of FC «Sumy» Sumy and his assistant signs of violations of the Code of Ethics and Fair Play, Disciplinary Rules FFU, which in turn can lead to criminal liability.”*

15. In the report from the UAF Ethics Committee, the Player is mentioned numerous times. In its conclusion, the report states the following:

*“Given the above information, the Committee has a comfortable confidence in the participation of FC «Sumy» players: (...) [the Player] (...) in manipulating the results of football matches by influencing and / or conspiring to change the outcome of the match, to encourage individuals or groups of players in any form to achieve the result of matches in the interests of the Club or a third party”.*

#### **B. Proceedings before the decision-making bodies of the UAF**

16. The report from the UAF Ethics Committee was sent to the UAF Control-Disciplinary Committee (the “UAF DC”). On 11 April 2019, the UAF DC issued a decision (the “First UAF DC Decision”), where it found that FC Sumy, some of its players (including the Player), club officials and persons related to the Club had committed violations of the UAF Code of Ethics and the UAF Disciplinary Rules regarding match-fixing. FC Sumy was expelled from the PFL and its status as a professional club was revoked. The Player was sanctioned with a lifetime ban from taking part in any football-related activity.
17. On 30 May 2019, the Player submitted an appeal against the First UAF DC Decision to the UAF Appeals Committee (the “UAF AC”). On 10 October 2019, the UAF AC set aside the First UAF DC Decision, and sent the case back to the UAF DC for additional consideration.
18. On 12 March 2020, the UAF DC issued its second decision (the “Second UAF DC Decision”). The UAF DC found that FC Sumy, some of its players (including the Player), club officials and persons related to the Club had committed violations of the UAF Code of Ethics and the UAF Disciplinary Rules regarding match-fixing. FC Sumy was expelled from the PFL and its status as a professional club was revoked. With respect to the Player, he was sanctioned with a three-year ban from taking part in any football-related activity. The decision states, inter alia:

*“The UAF CDC concludes that the guilt of [the Player] was confirmed by the evidence examined during the meetings of the Control and Disciplinary Committee, both individually and in combination.*

*[The Player] as a defender, took part in matches, which by football experts are classified as manipulated: FC “Nyva” Ternopil - FC “Sumy” Sumy (2:0, on November 25, 2013), FC “Desna” Chernihiv - FC “Sumy” Sumy (3:0, on September 15, 2017), FC “Sumy” Sumy - FC “Desna” Chernihiv (0:2, on April 22, 2018), FC “Cherkasy Dnipro” Cherkasy – FC “Sumy” Sumy (0:3, on May 19, 2018).*

*(...)*

*Thus, the CDC UAF comes to the conclusion of awareness and direct participation in the influence and conspiracy to change the results of matches, as well as violation of the principle of fair play directly during the performance on the field.”*

19. The Player appealed the Second UAF DC Decision to the UAF AC, which on 1 December 2020 issued a decision (“Appealed Decision”) in which the appeal of the Player was dismissed, and the sanction of a three-year ban imposed on the Player in the Second UAF DC Decision was confirmed. The Appealed Decision states inter alia:

*“AC UAF agrees with the conclusions of the CDC UAF that the guilt of [the Player], in order to change the results of matches, as well as violation of the principle of fair play directly during the performance on the field. AC UAF concludes that [the Player], Bogachov D., Davydov O. did not fight honestly, and the nature and circumstances of their mistakes indicate the depth of the players in the organization and direct impact on the results of matches.*

*With regard to the participation of [the Player] in the matches manipulated by the AC UAF, it is noted that, according to the report of UEFA, UEFA specialists in the match FC “Nyva” Ternopil - FC “Sumy” Sumy (2:0, on November 25, 2013) attention to the game and mistakes of defender [the Player] which affected the final result of the match. The Conclusions of the UAF Expert Group on the assessment of players’ compliance with the principles of fair play in the match between FC “Sumy” Sumy and FC “Desna” Chernihiv (0:2, on April 22, 2018) state [the Player] violated the basic principles of the Code of Ethics and Fair Play that affected the final result of the match.”*

20. The parties received the Appealed Decision on 24 March 2021.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

21. On 13 April 2021, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision, naming the UAF as Respondent, pursuant to Article R48 of the Code of Sports-related Arbitration (2020 edition) (the “CAS Code”). In the Statement of Appeal, the Club requested that the case be submitted to a Sole Arbitrator.

22. On 19 April 2021, the Appellant requested a 10-day extension of the Appeal Brief deadline, which was granted further to Article R32 of the CAS Code. Accordingly, the new deadline to submit the Appeal Brief was 4 May 2021.
23. On 23 April 2021, the Respondent *inter alia* requested that its deadline to comment on the number of arbitrators be suspended until after it received the Appellant's Appeal Brief.
24. On 27 April 2021, the Appellant objected to the Respondent's request that its deadline to comment on the number of arbitrators be suspended until after it received the Appellant's Appeal Brief.
25. On 29 April 2021, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had decided that the Respondent's request that its deadline to comment on the number of arbitrators be suspended until after it received the Appellant's Appeal Brief was denied and it was accordingly granted a new deadline to provide its comments in that respect.
26. On 5 May 2021, the Respondent indicated *inter alia* that it did not agree that this dispute be referred to a sole arbitrator.
27. On 10 May 2021, the CAS Court Office received a copy of the Appeal Brief filed further to Article R51 of the CAS Code. On the same date, the Appellant explained that 4 May 2021 was an official holiday in Ukraine and that therefore the Appeal Brief deadline was 5 May 2021.
28. On 17 May 2021, the UAF submitted a letter *inter alia* requesting the CAS Court Office to confirm whether the Appeal Brief was dispatched by the Appellant via courier on 5 May 2021 or, alternatively, to provide the relevant shipment details for tracking, and also indicated that it would not pay its share of the advance of costs.
29. On 18 May 2021, the CAS Court Office *inter alia* provided the Parties with documents regarding shipment of the Appeal Brief. According to the shipment waybill, the Appeal Brief was shipped 5 May 2021. The receipt from the courier was also dated 5 May 2021.
30. On 20 May 2021, the UAF submitted a letter claiming that the Appeal Brief was not filed within the time limit and requested the CAS Court Office to remove the present proceedings from the CAS roll and to issue a Termination Order. In this regard, the UAF pointed out that according to the official DHL tracking information, the Appeal Brief was dispatched by the Player only on 6 May 2021, i.e. one day after the time limit. Against this background, the UAF requested that the appeal should be deemed withdrawn, pursuant to Article R51(1) of the CAS Code.

31. On 25 May 2021, the CAS Court Office informed the Parties that the issue of the admissibility of the Appeal Brief would be for the Panel or Sole Arbitrator, once constituted, to decide.
32. On 27 May 2021, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit this proceeding to a Sole Arbitrator, further to Article R50 of the CAS Code.
33. On 2 June 2021, the CAS Court Office, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the proceeding is constituted as follows:  
  
Sole Arbitrator: Mr Espen Auberg, Attorney-at-Law in Oslo, Norway
34. On 8 June 2021, the Parties were informed by the CAS Court Office that the Sole Arbitrator had considered the Parties' respective positions with regards to the admissibility of the appeal, and concluded that the Appeal Brief was deemed admissible. The Parties were also informed that the reasons for this decision would be provided in the final Award. In the same letter, the Respondent was given a deadline of 20 days to submit its Answer.
35. On 19 July 2021, and after having been granted an extension further to Article R32 of the CAS Code, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
36. On 21 July 2021, the CAS Court Office invited the Parties to submit their positions on whether they preferred a hearing to be held.
37. On 28 July 2021, the Respondent indicated that it did not request that a hearing be held in this proceeding. On the same date, the Appellant indicated that he did request that a hearing be held.
38. Also on 30 July 2021, the Appellant informed the CAS Court Office that his legal representative had terminated his mandate and that the Appellant accordingly no longer had legal representation. The Appellant requested that he be given two weeks to find a new legal representative and to inform CAS whether he prefers a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
39. On 2 August 2021, the Respondent indicated it would not object to the Appellant's request and the Sole Arbitrator granted the Appellant's request.
40. On 11 August 2021, the Appellant informed the CAS Court Office that he had not found a new representative and that he therefore would represent himself. Further, the Appellant stated that he preferred for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.



41. On 1 September 2021, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well-informed to decide the case based solely on the Parties' written submissions, without the need to hold a hearing, further to Article R57 of the CAS Code. In the same letter, the Parties were informed that they would be invited to file a final, additional round of submissions in due course, further to Articles R44.1 and R57 of the CAS Code.
42. On 29 September 2021, the Appellant informed the CAS Court Office that he had found a pro bono counsel that had agreed to represent him.
43. On 1 November 2021, the Appellant filed his Reply, further to Article 44.1 of the CAS Code.
44. On 17 November 2021, the Respondent filed its Rejoinder, further to Article R44.1 of the CAS Code.
45. On 23 November 2021, the Parties were again invited to indicate whether they requested a hearing, and both Parties maintained that they did not request that a hearing be held in this proceeding.
46. On 23 November 2021, the CAS Court Office issued an Order of Procedure, which was duly signed and returned by the Appellant on 24 November 2021 and by the Respondent on 6 December 2021, with comments on Item 8.2 concerning the admissibility of the Appeal Brief, to which the Respondent still maintained its objection. By signing the Order of Procedure, the Parties confirmed that their right to be heard had been respected and that CAS had jurisdiction to hear the dispute.

#### **IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF**

47. This section of the Award does not contain an exhaustive list of the Parties' contentions. Its aim is to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

##### **A. The Player's submissions**

48. The Player's submissions may be summarized as follows:
  - In accordance with the general principle of disciplinary cases, the burden of proof lies with the prosecutor, in this case with the UAF.
  - There are three main issues that should be analyzed in the present proceedings:

1. whether the results of the matches of FC Sumy in which the Appellant was playing were manipulated;
  2. whether the Player was involved in fixing these matches;
  3. whether the sanction imposed by the UAF is legal and proportionate.
- The UAF's claim that the Player has been involved in match fixing is based on the following circumstances:
    - a) Opinions of the UAF Expert Group;
    - b) The findings of the UEFA BFDS and Federbet reports that cover the period from June 2016 until November 2018, and one match in November 2013;
    - c) Evidence collected by the police contained in a letter from the General Prosecution Office of Ukraine;
    - d) Confessions and testimonies of witnesses and whistle-blowers;
    - e) The fact that FC Sumy did not appeal against the decisions that made these factual conclusions;
    - f) The facts that the Player played the full 90 minutes in four official matches that were reported as being escalated in the unchallenged UEFA BFDS and Federbet reports.
  - The UAF did not provide adequate, lawful evidence of the Player's guilt in violation of the UAF Code of Ethics and Fair Play. The evidence provided by the UAF does not meet the standard of proof.
  - With regards to the opinions of the UAF Expert Group, the Player is mentioned only in one Expert Opinion: No. 8/18 dated 17 July 2018. This report analyzes the match of the 29th round of the Ukrainian Championship First League (i.e. the PFL) of the 2017/2018 season between FC Sumy and FC Desna Chernigiv that took place on 22 April 2018, which ended with a score of 0:2 in favor of FC Desna Chernigiv.
  - With regards to the match played on 22 April 2018, the UAF refers to the fact that abnormal bets were made on this match, namely that the match would end with the victory of FC Desna Chernigiv and that at least two goals would be scored in the match. In this match, the players of FC Desna Chernigiv scored goals in the 36<sup>th</sup> and 87<sup>th</sup> minute, the last from the penalty spot. The UAF Expert Opinion contains three references to the Player's passive actions:
    - a) at the 53rd minute;
    - b) "a few minutes later" (i.e. approximately at the 55th minute);
    - c) at the 93rd minute.

- Thus, the Player's actions that are criticized in the UAF Expert Opinion did not lead to FC Desna Chernigiv scoring a goal. The UAF Expert Opinion indicates that the Player's actions were passive, and also describes the mistakes of other players of FC Sumy.
- The second goal was scored at the 87th minute from the penalty spot. Penalties are the responsibility of the match referee. The controversy of the penalty was noted in the UAF Expert Opinion. Neither the Player nor other players of FC Sumy could influence the decision of awarding a penalty, which was made by the match referee. There is no evidence of the illegal influence of the players on the match referee.
- The UAF Expert Opinion also describes the allegedly negative actions of the Player at the 93rd minute of the match. It should be noted that by this time the score of the match was already 0:2 in favor of FC Desna Chernigiv. It means that a supposedly fixed result, which was considered suspicious, had already been achieved. Therefore, the Player did not even have reasons and motives at that moment to act passively and intentionally incorrectly, thereby risking his reputation.
- Thus, UAF Expert Opinion No. 8/18 does not confirm that the Player intentionally played passively and incorrectly, and made mistakes in the match. The Player did everything within his capabilities and skills to contribute to the victory of his team.
- The match between FC Sumy and FC Desna Chernigiv played on 22 April 2018 is analyzed in the Federbet report dated 7 September 2018. The report points to two suspicious moments during the match:
  - before the first goal was scored, when the score was 0:0, the price for the victory of the guests – FC Desna Chernigiv – began to go down and reached a minimum before the first goal;
  - at the end of the match, 5 minutes before its end, it seemed that the players who place the bets were sure that the guests – FC Desna Chernigiv – would score the second goal.
- In both cases, there were no negative actions of the Player that were noted by the experts. That is, the actions of the Player were not associated with abnormal bets. In the moments when the bets looked suspicious, the Player played normally and not suspiciously. Thus, the Player's guilt has not been proven.
- The evidence collected by the Ukrainian police, which the UAF received together with the letter from the General Prosecution Office of Ukraine, cannot be used as evidence in this case, as it is in breach of Ukrainian law. In accordance with the Ukrainian Civil Procedure Code, documents and information obtained as a result of law enforcement intelligence gathering activities during the pre-trial investigation of criminal proceedings do not have the status of evidence for courts / arbitration in other cases, since there is no court decision by which the materials submitted by the prosecution or the defense were admitted as evidence. Only the court has the authority to draw conclusions about whether a person has committed a crime or offense.

- It follows from the Criminal Procedure Code of Ukraine that the participants in criminal proceedings and other persons are prohibited from disclosing the pre-trial investigation information, if there is no written permission from the investigator or prosecutor. The UAF has not provided written permission from the investigator or prosecutor to disclose the pre-trial investigation information. The absence of permission to disclose the information obtained as a result of the pre-trial investigation in criminal proceedings in the materials of arbitration proceedings brings into question the legitimacy of the document itself in this arbitration proceeding, even if such a document does not have the status of evidence. Thus, the information and conclusions set out in the reference, which is an attachment to the letter of the General Prosecution Office of Ukraine, cannot be used as evidence in court or arbitration proceedings due to their evidentiary force, which is directly determined by the legislation of Ukraine and the “*Convention for the Protection of Human Rights and Fundamental Freedoms*”.
- The legal nature of the provided reference attached to the letter of the General Prosecution Office of Ukraine reflects the statement of one of the participants in the telephone conversation received as a result of operational search measures, which is not supported by any evidence. Further, there is no witness testimony of this participant. The submitted reference only confirms that there is a recording of a telephone conversation in the materials of the criminal proceedings. This recording does not have the status of evidence, as well as the status of witness testimony of one of the participants in the conversation until the decision of the court in the criminal proceedings is taken. UAF used this reference as second hand hearsay evidence because of the absence of any other evidence of the Player’s guilt. Second hand hearsay evidence is not sufficient evidence in arbitration proceedings, since the statements of one person cannot serve as a basis for accusation, both taking into account the rules of international arbitration and in accordance with Swiss law. Thus, the provided reference in any case cannot serve as proof of the Player's guilt.
- The testimony of anonymous witnesses and whistle-blowers cannot be taken into account as the Player is deprived of the right to put questions to witnesses and verify the truth of their testimony, which violates the Player’s right to a fair trial. Admitting anonymous witness statements affects the right to be heard, as guaranteed by Article 6 of the European Convention on Human Rights (“ECHR”) and Article 29.2 of the Swiss Constitution.
- Jurisprudence from the Swiss Federal Tribunal and CAS show that evidence from anonymous witnesses are admissible under strict conditions:
  - The witness must provide a convincing motivation of his or her right to remain anonymous;
  - The court must have the possibility to see the witness;
  - There must be a concrete risk of retaliations against the witness by the party against whom he or she is testifying;
  - The witness must be questioned by the court itself and such court must investigate his or her identity and the reliability of his or her evidence; and

- The opposing party must be able to cross-examine the witness through an “audiovisual protection system”.
  - The UAF has not provided any evidence that the disclosure of the identity of the witnesses could threaten their personal safety and that the anonymity of the witnesses was indeed a necessary measure. There is no information that witnesses have been or may have been subjected to threats, insults, pressure or intimidation. If the danger to the witnesses is not proven, they have no right to anonymity and the UAF cannot use the testimony of such anonymous witnesses. The Player was not given the opportunity to cross-examine witnesses using audiovisual protection, to put questions to them by phone or in other ways, without violating the anonymity of the witnesses. Also, the UAF did not provide evidence that the identities and reputation of the anonymous witnesses were properly verified. Thus, the Player considers that the anonymous testimony of witnesses should be rejected.
  - The UAF’s statement that FC Sumy did not appeal the decision because it correctly established the facts does not meet the standard of proof and is an assumption that is not supported by any evidence. The fact that FC Sumy has not filed an appeal cannot be considered as evidence of FC Sumy’s admission of guilt. Appealing a decision is a right, but not an obligation, of a party to a case. The fact that a party does not appeal against a decision cannot indicate that a party agrees with the decision. There are many other reasons why a party may not have appealed a decision, such as lack of financial capacity.
  - The fact that the Player played a full 90 minutes in four official matches found to have been fixed does not indicate that he has manipulated the results of those matches or was involved in match-fixing. The Player takes part in most of FC Sumy’s matches and usually plays for the full 90 minutes. With regard to all other matches in which the Player took part, there was no suspicion that they were fixed. Thus, this assumption of the UAF does not meet the standard of proof.
49. On this basis, the Player requested CAS to render an award as follows:

- “a) to set aside the decision of the Appeals Committee of UAF dated 1 December 2020 in the case No. 0004/2020-AK;*
- b) to set aside the decision of the Control and Disciplinary Committee of the UAF dated 12 March 2020 in the case: “On additional consideration of the case “On the statement of the FFU Ethics and Fair Play Committee regarding possible violations of the Code of Ethics and Fair Play by the FC “Sumy” Sumy”;*
- c) to find the Player not guilty in violating the Code of Ethics and Fair Play;*
- d) to set aside the sanction imposed on the Player in the form of a ban on the Player to carry out any activity related to football (administrative, sports, etc.) for 3 years.”*

**B. The UAF's submissions**

50. The UAF's submissions may be summarized as follows:

- The UAF has jurisdiction to deal with disciplinary matters with respect to the Player, as pointed out in Articles 1 and 4 of the 2012 UAF Disciplinary Rules, and Articles 1 and 36 of the 2016 UAF Disciplinary Rules. Both editions of the UAF Disciplinary Rules contain specific provisions relating to match-fixing. The Player was an FC Sumy player when he was involved in match-fixing and was officially registered with the Club. He was subject to the UAF Rules and Regulations, including the UAF Disciplinary Rules. Therefore, the UAF had competence to investigate the matter and impose disciplinary sanctions on the Player. The fact that his actions may also constitute a criminal offence under Ukrainian law does not exclude the jurisdiction of the UAF, as a public association, to impose a disciplinary sanction on him.
- With regards to the adequacy of the evidence, the UAF argues that all evidence provided by the UAF must be admitted and assessed.
- The evidence based on the Ukrainian police's phone tapping must be allowed. Firstly, the UAF was not provided with audio recordings but only a summary. Secondly, the information about the outcome of the tapping of phone conversations was provided to the UAF by the General Prosecution Office of Ukraine. Therefore, there was no breach of disclosure by the police because the article of the Criminal Code to which the Player refers expressly provides that disclosure should not be allowed unless there is permission for such disclosure from the prosecutor's office, which there was. Thirdly, even if the information from the police was considered to be illegally obtained evidence, this would not prevent it from being admitted and assessed by the Sole Arbitrator. It is established CAS jurisprudence that even if evidence is illegally obtained, it can still be admitted based on a balancing of the interests. It is clear that the public interest in the fight against match-fixing will prevail over any private interest of the Player with respect to that information, in particular in circumstances where the phone conversations were recorded by the police investigating a crime.
- With regards to the opinion of the UAF Expert Group, the use of expert witness testimony is prevalent and widely accepted in disciplinary proceedings before CAS. Expert witnesses provide valuable insight when a tribunal may benefit from expert analysis, and the UAF Expert Group makes its decisions "*by the majority of the Expert Group members*". There is no requirement that the opinion must be signed by all the members of the UAF Expert Group. The opinions of the UAF Expert Group were valid and in force when the Second UAF DC Decision was considered and rendered. The Player did not even initiate any proceedings aimed to annul the opinions of the UAF Expert Group, including the opinion related to Match 3 that makes conclusions regarding the mistakes of the Player, making any further discussion on their validity moot.
- The evidence provided through the UEFA BFDS and Federbet reports confirm that the matches were suspicious and fixed, and this is uncontested by the Player. As already noted

above, CAS panels have issued sanctions only on the basis of a UEFA BFDS report and video footage. The Player's involvement in a series of match-fixing is supported not only by the UEFA BFDS and Federbet reports, but also by other evidence. The Player has not presented any evidence or expert opinion that would rebut the conclusions reached by the experts in the UEFA BFDS and Federbet reports, and the findings of the reports are unchallenged by the Player. The fact that the Head of the UAF Ethics Committee, Mr Baranca, is also the Secretary General of Federbet does not mean that the findings of the report are incorrect. They are based on analytical data and its evaluation.

- The request of the Player to exclude testimonies of anonymous witnesses is moot because the UAF does not rely on any testimonies of anonymous witnesses in the present CAS proceedings. Furthermore, the admissibility of such testimony has been expressly confirmed in CAS cases.
- With regards to the Player's claim that the opinion of the UAF Expert Group was issued without the participation of the Player, the UAF points out that the decision-making process of the UAF Expert Group is not a trial and players are given the right to defend themselves during the proceedings before the UAF judicial bodies.
- In essence, the results of four matches played by FC Sumy in which the Player participated were manipulated. The Player was involved in fixing those four matches. The sanction imposed by the UAF's Appeals Committee is legal and proportionate.
- With regards to the claim that the results of four matches played by FC Sumy in which the Player participated were manipulated, the UAF points out that the Player does not dispute the findings of the UAF judicial bodies that FC Sumy was involved in match-fixing and was actively and systematically manipulating match results during the period when the Player was registered at the Club.
- As confirmed by the findings of the UAF judicial bodies, there can be no doubt that there was a system of match-fixing in FC Sumy. FC Sumy's involvement in match-fixing is proven by inter alia 22 reports issued by the UEFA BFDS and Federbet, information provided by the police that investigated the matter and that had monitored phone conversations according to which the management of FC Sumy arranged bribing of referees and players to influence matches, opinions of the UAF Expert Group on the performance of some of the players during matches, statements from anonymous witnesses, confession of a referee who confirmed receiving money from FC Sumy for fixing a match and statements of other players.
- The UAF further points out that the Club decided not to appeal the decision of the UAF judicial bodies, despite this effectively meaning that the Club has ceased to exist.
- The UAF also points out that the Player does not challenge the findings of the UEFA BFDS and Federbet reports that were issued with respect to the 'escalated' matches that he was personally involved in.

- The Player played the full 90 minutes in the following four matches that were reported as being escalated in the unchallenged UEFA BFDS and Federbet reports:
  - a) FC Nyva Ternopil v FC Sumy on 25 November 2013 (Match 1);
  - b) FC Desna Chernigiv v FC Sumy on 15 September 2017 (Match 2);
  - c) FC Sumy v FC Desna Chernigiv on 22 April 2018 (Match 3);
  - d) FC Cherkasy Dnipro v FC Sumy on 19 May 2018 (Match 4).
- The results of those matches were manipulated, as specified in the reports provided by the UEFA BFDS and Federbet:

- Match 1: FC Nyva Ternopil v FC Sumy on 25 November 2013

On 25 November 2013, FC Sumy played an away match against Nyva Ternopil in the First Division. The Player was an FC Sumy defender for the match which ended 2:0 in Nyva Ternopil's favour. After the match, the UAF received a UEFA BFDS report concerning irregular betting patterns associated with the match. It was summarised in the UEFA BFDS report that the UEFA BFDS believes it was possible that this match was manipulated for betting purposes by FC Sumy.

- Match 2: FC Desna Chernigiv v FC Sumy on 15 September 2017

On 15 September 2017, FC Sumy played an away match against FC Desna Chernigiv in the First Division. The Player was an FC Sumy defender for Match 2, which ended 3:0 in Desna Chernigiv's favour. After the match, the UAF received a UEFA BFDS report concerning irregular betting patterns associated with the match. It was summarised in the UEFA BFDS report that there was clear and overwhelming evidence that the match was unduly influenced.

- Match 3: FC Sumy v FC Desna Chernigiv on 22 April 2018

On 22 April 2018, FC Sumy played a home match against FC Desna Chernigiv in the First Division. The Player was FC Sumy's defender for the match, which ended 0:2 in Desna Chernigiv's favour. After the match, the UAF received a report from Federbet concerning irregular betting patterns associated with the match. The report described how FC Sumy had been involved in at least six matches with unrealistic odds movement.

- Match 4: FC Cherkasy Dnipro v FC Sumy on 19 May 2018

On 19 May 2018, FC Sumy played an away match against FC Cherkasy Dnipro in the First Division. The Player was an FC Sumy defender for the match. The score after the first half was 1:2 in Cherkasy Dnipro's favour, albeit the match ended early due to a pitch invasion. The UEFA



BFDS report contained concerns about irregular betting patterns associated with the match. It was summarised in the UEFA BFDS report that there was overwhelming evidence that the course or result of this match was unduly influenced.

- The second decision from the UAF Disciplinary Committee, confirmed by the Appealed Decision, correctly found that the matches were unduly influenced with a view to gaining betting profits. The Player does not dispute this finding, and offers no evidence to dispute the finding.
- Based on CAS jurisprudence, the workings of the UEFA BFDS must be as a reliable means of evidence to prove indirect involvement of match-fixing.
- In consideration of the fact that FC Sumy's liability for match-fixing is clearly proven, and that the Player offers no alternative explanation, the only reasonable conclusion is that the four matches in which the Player participated were manipulated.
- On this basis, there can be no doubt that the four matches were manipulated. Further, the Player was involved in the manipulation of the four matches.
- The UAF judicial bodies correctly found that the Player was involved in fixing the four matches, based on inter alia the UEFA BFDS and Federbet reports, video footages of the matches, the opinion of the UFA Expert Group regarding the Player's performance during one of the matches, information from the police, and the fact that the Player has previously been found to have been involved in match-fixing.
- The Player has been expressly mentioned in connection with a key incident in the UEFA BFDS report relating to Match 1, where he was the captain of FC Sumy. In the report, it is described that he received a straight red card in injury time and that he has spent much of his career at the opposing club.
- The Player has been involved in numerous other suspicious matches, including a match between Tytan Armyansk v FC Sumy on 19 October 2013, and at least two friendly matches for FC Sumy that were reported as elevated by Federbet and the UEFA BFDS. The Player was also registered at FC Sumy for the season 2017/2018 when the Club indisputably was involved in match-fixing. The Player was convicted of match-fixing in 2015, in the period between Match 1 and Match 2.
- The fact that Match 3 was fixed is supported by the Federbet report. In its analysis of Match 3, the UAF Expert Group established that the actions of the Player on the pitch were suspicious for the purposes of match-fixing and that the Player, as well as a number of other players of FC Sumy, made a number of mistakes that are not consistent with fair play. The Player's performance in Match 3 must be seen in connection with the Federbet report which stated that the bettors seemed to be sure that the FC Sumy's opponent would score the second goal before the end of the match.

- Police recordings of phone conversations demonstrates that the Player was involved in fixing the result of Match 3. The same day Match 3 was played, in a phone conversation between the director of FC Sumy, Mr Volodymyr Kozlenko, and one of the club's players, Mr Egor Lugovyy, the latter confirmed that the Player was aware that the match result should be fixed. Four days later, in a phone conversation between the same persons, Mr Lugovyy confirmed that the Player should receive some part of the reward. The recordings of these conversations were conducted by the police secretly. There was no reason for Mr Lugovyy to mention the Player unless the latter was involved in the scheme and would receive payment for fixing the match. The police further established that the discussed amount was transferred from Mr Kozar, the Club's owner, to the bank account of Mr Lugovyy, for further distribution to other involved players. Other players mentioned in the conversation between Mr Lugovyy and Mr Kozlenko admitted that they had received money from Mr Lugovyy. The Player did not provide any evidence or explanation as to why Mr Lugovyy's statement on the telephone should not be considered as proof of his guilt.
- The Player's involvement in match-fixing constitutes a number of breaches of the UAF Disciplinary Rules and the UAF Code of Ethics.
- The Player influenced the results in at least four official matches of FC Sumy and received payment for such match-fixing activity. The Player had to ensure that the Matches were lost, sometimes by a particular margin and, therefore, was not playing according to the rules of Fair Play. In particular, the Player breached Article 30 of the 2012 UAF Disciplinary Rules, with respect to Match 1, and Article 20 of the 2016 UAF Disciplinary Rules, with respect to Matches 2, 3 and 4. When the Player was at FC Sumy, he could not have been unaware that the Matches were fixed, but failed to report this to the relevant authorities of the UAF. In accordance with the UAF Code of Ethics, and well-established CAS jurisprudence, the Player is liable for breaching his obligation to report the facts of manipulating match results to the UAF.
- As the Player is guilty of match-fixing, and taking into account the seriousness of the infringements, the Respondent submits that the Sole Arbitrator may conclude that the sanction imposed by the UAF DC, and confirmed in its entirety by the UAF AC, is just and proportionate. The sanction was imposed by the UAF judicial bodies in accordance with the applicable regulations. There should be no doubt that the sanction of a three-year ban is just and proportionate. CAS should amend a disciplinary decision of a UAF judicial body only in cases in which it finds that the relevant UAF judicial body exceeded the margin of discretion accorded to the Sole Arbitrator by the principle of the autonomy of an association, i.e. only in cases in which the UAF judicial body concerned is held to have acted arbitrarily. This is not the case if the Sole Arbitrator merely disagrees with a specific sanction, but rather only if the sanction concerned is considered to be evidently and grossly disproportionate to the offence.
- The UAF judicial bodies acted within their powers and in exercise of their discretion afforded to them by the UAF Disciplinary Rules when imposing a three-year ban. Each

of these instances reached the same conclusion following a full review of the submissions made by the parties, after the Player had a full and fair opportunity to present his defence before the UAF DC and the UAF AC. The UAF takes a strong stance against any potential unethical act, especially any act that can affect the integrity of football competitions, which is very damaging to the good governance, integrity and viability of football. The fight against match-fixing is of utmost importance to the UAF as it poses an immense threat to the sport in general. The fight against match manipulation is not only a main concern of the UAF but also of the entire sporting community. Protecting integrity in sports is a crucial and vital duty of any sports association.

- The sanction imposed in the Second UAF DC Decision, and confirmed in the Appealed Decision, namely a three-year ban, should not be reduced given the seriousness of the violation and shall therefore be confirmed.

51. On this basis, the UAF requests CAS to render an award as follows:

*“(1) To dismiss the appeal filed by Mr Taras Durai on 12 April 2021 in its entirety.*

*(2) To confirm the decision of the Appeals Committee of the Ukrainian Association of Football dated 1 December 2020.*

*(3) To order Mr Taras Durai to bear the full CAS arbitration costs.*

*(4) To order Mr Taras Durai to make a significant contribution to the legal and other costs of the Ukrainian Association of Football in connection with these proceedings”.*

## V. JURISDICTION

52. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”*

53. In addition to Article R47 of the CAS Code, the jurisdiction of the CAS derives from Article 39 of the UAF Disciplinary Rules, which reads:

*“Article 39. Court of Arbitration for Sport (CAS)*

*Decisions made by the UAF Appeals Committee can be appealed to the CAS, located in Lausanne, Switzerland. Decisions on:*

*1.1. violations of the Rules of the game;*

*1.2. suspension from participation in matches for up to 4 (four) or for a period of up to 3 (three months) are not subject to appeal to the CAS.”*

54. In the Appealed Decision, it is stated that the decision can be appealed to the CAS within 21 days from its receipt, in accordance with the UAF Disciplinary Rules and Article R49 of the CAS Code.
55. The jurisdiction of CAS is not contested by the Parties and is further confirmed by the Order of Procedure duly signed by the Parties.
56. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

## VI. ADMISSIBILITY

57. Article R49 of the CAS Code reads as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

58. The time limit for submitting a Statement of Appeal is thus 21 days from the receipt of the decision appealed against pursuant to the Article R49 of the CAS Code. The parties received the Appealed Decision on 24 March 2021, and the time limit for submitting the Statement of Appeal was 14 April 2021. The Statement of Appeal was filed by the Appellant on 13 April 2021, hence within the deadline of 21 days from receiving the Appealed Decision.
59. The time limit for filing an Appeal Brief is ten days following the expiry of the time limit for the Statement of Appeal, pursuant to the Article R51 of the CAS Code. The time limit initially expired on 24 April 2021, but 19 April 2021 the CAS Court Office granted a 10-day extension to the Appellant further to Article R32 of the CAS Code, further to the Appellant’s request. Hence, the time limit to submit the Appeal Brief expired on 4 May 2021.
60. Article R32 of the CAS Code provides the following:

*“The time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location of their own domicile or, if represented, of the domicile of their main legal representative, on the last day on which such time limits expire. If the last day of the time limit is an official holiday or a non-business day in the location from where the document is to be sent, the time limit shall expire at the end of the first subsequent business day.”*
61. The initial time limit to file the Appeal Brief, 4 May 2021, was an official holiday in Ukraine. Therefore, in accordance with Article R32 of the CAS Code, the time limit to file the Appeal Brief was automatically extended to 5 May 2021. This is not contested by the Respondent.

62. However, the Parties do not agree on when the Appeal Brief was sent by courier to the CAS Court Office. According to the shipment waybill, the Appeal Brief was shipped on 5 May 2021. The receipt from the courier is also dated 5 May 2021. However, the official courier tracking information indicates that the Appeal Brief was dispatched by the Player on 6 May 2021.
63. The UAF claims that the Appeal Brief was not filed within the time limit, as the official courier tracking information indicates that the Appeal Brief was dispatched on 6 May 2021. Against this background, the UAF requested CAS to remove the present proceedings from the CAS roll and to issue a Termination Order, pursuant to Article R51(1) of the CAS Code.
64. The Player maintains that the Appeal Brief was indeed sent on 5 May 2021, which is demonstrated by the date on the shipment waybill. The Player argues that the date 6 May 2021 in the courier tracking information could be the result of the courier's employees entering the received documents into their program only the next day, which cannot be considered violation of the time limit by the Player. Further, the Player argued that the actions for the submitting of documents to the courier service were carried out by the Appellant in compliance with the deadline, and further actions of the courier service, which are beyond the competence of the Appellant, cannot be grounds for depriving the Player of the right to appeal in conditions when, for his part, he did everything in his power to comply with the time limit.
65. The time limit for the Appeal Brief is regulated by Article R51.1 of the CAS Code, which reads:
- “Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit.”*
66. With regards to the admissibility of the appeal, the question is whether the Appeal Brief was sent by courier within the relevant time limit, as failure to send the Appeal Brief within the relevant time limit shall result in the appeal being deemed to have been withdrawn pursuant to Article R51 (1) of the CAS Code.
67. The Sole Arbitrator notes that the issue with regards to the admissibility of the appeal will rely on a review of the evidence, since the dates on the courier receipt and shipment waybill differs from the date stated in the courier tracking information. In this respect, the Sole Arbitrator notes that CAS jurisprudence consistently has applied the principle of *actori incumbit probatio* in questions regarding burden of proof. In the case CAS 2020/A/6796, the panel stated:

*“[I]n CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”.*

68. The Sole Arbitrator endorses the view of the panel in the abovementioned CAS case and notes that it is the UAF that requested CAS to remove the present proceedings from the CAS roll and to issue a Termination Order as a consequence of the alleged late submission of the Appeal Brief, and thus which has the burden of proving that the Appeal Brief was submitted late.
69. Although the official courier tracking information gives an indication that the Appeal Brief was sent a day after the time limit, the shipment waybill and the receipt from the courier indicate that the Appeal Brief was sent on time.
70. With regards to the question of when the Appeal Brief was sent, the UAF has submitted a witness statement from Ms Oksana Zaliszko dated 17 September 2021. In this witness statement, Ms Zaliszko presents herself as an in-house counsel with the Respondent and claims that she has been in contact with the DHL office in Ternopil, Ukraine, which informed her that the Player had sent the documents on 6 May 2021. The Sole Arbitrator notes that the witness statement lacks essential information, such as personal details of the person at the DHL office who disclosed such alleged information. As the witness statement in principle is presented by an employee of the Respondent and is not supported by other evidence, the claims in the witness statement cannot be taken into consideration with regards to the issue of when the Appeal Brief was sent.
71. Further, the Sole Arbitrator notes that there are no indications, or claims, that the shipment waybill or the receipt from the courier were forged. As there are no other indications that the Appeal Brief was sent 6 May 2021, the Sole Arbitrator finds that the UAF has not adequately discharged the burden of proof to establish to the comfortable satisfaction of the Sole Arbitrator that the Appeal Brief was submitted after the time limit.
72. Against this background, the Sole Arbitrator concludes that the Appeal Brief was timely filed in due form and is considered admissible, and thus that the appeal is not deemed withdrawn further to Article R51 of the CAS Code.

## **VII. APPLICABLE LAW**

73. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

74. The Appellant states that since the Parties did not choose the applicable rules of law, the dispute should be decided in accordance with the rules of law of Ukraine as the country in which the UAF, i.e. the body that has issued the Appealed Decision, is domiciled and registered.
75. The Appealed Decision was rendered by the UAF Appeals Committee in accordance with the UAF Regulations, in particular the 2012 and 2016 versions of the UAF Disciplinary Rules, which state that the rules apply to all relations directly related to football activities in accordance with the legislation of Ukraine, and statutory and regulatory documents of the UFA except for the exclusive competence of UEFA and FIFA.
76. On this basis, the UAF Regulations shall apply primarily and Ukrainian law shall apply subsidiarily if there are issues that are not resolved by the UAF Regulations.
77. As the events that gave rise to the disciplinary procedures took place between 25 November 2013 and 19 May 2018, and the relevant regulations have been amended during that time, only the regulations that were in force at the time of each event will be applicable. In particular, the event that took place in November 2013 will be assessed based on the 2012 UAF Disciplinary Rules. The events that took place in 2017 and 2018 will be assessed based on the 2016 UAF Disciplinary Rules.
78. The provisions of the 2012 UAF Disciplinary Rules that are particularly relevant are as follows:
  - *“Definitions  
[...]  
Holding a match in violation of sports ethics: a match, the result of which is reasonable to consider determined by agreement and held without observance of the principles of sports competition and fair play.”*
  - *“Article 1. General provisions  
[...]  
3. The Rules apply to all relations directly related to football activities in accordance with the legislation of Ukraine, statutory and regulatory documents of the [UFA] except for the exclusive competence of UEFA and FIFA.”*
  - *“Article 8. Types of violations*

*1. The violation is illegal intentional or negligent conduct or inactivity that contradicts the rules of statutory and regulatory documents of the UAF and the legislation of Ukraine.*

*2. Types of violations are:*

*[...]*

*2.12. manipulation of match results;”*

- *“Article 11. Disciplinary sanction*

*[...]*

*2. A disciplinary sanction shall be imposed taking into account all the circumstances of the case, given the gravity of the violations, the form and degree of guilt (except in cases of liability regardless of fault), and exempt circumstances, the characteristics of the person to whom the disciplinary sanction is applied. The sanction must be appropriate to the unlawful act and consistent with the aim of preventing future violations (for the person on whom it is imposed and for third parties).”*

- *“Article 13. Types of disciplinary sanctions*

*[...]*

*2. Disciplinary sanctions applicable only to individuals:*

*2.7. Ban on taking part in any football-related activity (administrative, sporting, etc.).”*

- *“Article 30. Manipulation of match results*

*1. Manipulation of match results is:*

*1.1. Any influence or conspiracy to change the outcome of the match.*

*1.2. Any proposals to encourage the team, individual or group of players (representatives of the club, team) in any form to achieve the result of the match in the interests of a third party.*

*1.3. Submission of statements and / or other documents by a person who works or is involved in football, the content of which does not correspond to the actual course of events at the stadium (football field) before, during and after the match.*

*2. Any person who influences the outcome of a match shall be subject to sanctions in the form of suspension from matches or a ban on taking part in any football-related activity, and / or a mandatory monetary contribution of at least UAH 75,000.”*

79. The 2016 UAF Disciplinary Rules are applicable to the events that took place in 2017 and 2018. The following provisions are particularly relevant:

- *“Article 2. Types of violations*

*2. Types of violations are:*

*[...]*

*9) participation or attempt to participate in corruption;*



[...]

14) *manipulation of match results;*

[...]

20) *any other actions that may influence the occurrence of the match or its result;*

[...]"

- *"Article 5. Disciplinary sanction*

*1. Disciplinary sanctions may be imposed cumulatively.*

*2. A disciplinary sanction shall be imposed taking into account all the circumstances of the case, given the gravity of the violations, the form and degree of guilt (except in cases of liability regardless of fault), the characteristics of the person to whom the disciplinary sanction is applied. The sanction must be appropriate to the unlawful act and consistent with the aim of preventing future violations."*

- *"Article 6. Types of disciplinary sanctions*

[...]

*2. Disciplinary sanctions applicable only to individuals:*

*2.7. Ban on taking part in any football-related activity (administrative, sporting, etc.)."*

- *"Article 20. Manipulation of match results*

*1. Manipulation of match results is:*

*1.1. Any influence or conspiracy aimed to change the outcome of the match.*

*1.2. Any proposals to encourage the team, individual or group of players (representatives of the club, team) in any form to achieve the result of the match in the interests of a third party.*

*1.3. Submission of statements and / or other documents by a person who works or is involved in football, the content of which does not correspond to the actual course of events at the stadium (football field) before, during and after the match.*

*1.4. Absence in the actions of the team's players of signs of fair competition according to the principles of Fair Play.*

*2. Any person who influences the outcome of a match shall be subject to sanctions provided for in article 6 of the Rules.*

*3. If a player or official influences the outcome of a match in accordance with paragraph 2 of this Article, the player / official and the club shall be subject to the sanctions provided for in article 6 of the Rules."*

80. In addition to the UAF Disciplinary Rules, the UAF Code of Ethics are applicable. The following provision from the 2018 version of the UAF Code of Ethics is particularly relevant:

*"Article 8. Bribery and corruption*

*1. Persons subject thereto are obliged not to offer, not to promise, not to give or not to accept directly or indirectly any unjustified financial assistance or other*

*benefit in any form in order to influence the actions or inaction within its own competence.”*

#### **VIII. PRELIMINARY ISSUE - THE PLAYER’S REQUEST TO EXCLUDE EVIDENCE**

81. In his submissions, the Player requested that the following evidence be excluded as evidence in this proceeding:
- The telephone conversations mentioned in the decisions of the UAF DC and the UAF AC;
  - Reports and information provided by Federbet; and
  - Testimonies given by anonymous witnesses.
82. The Sole Arbitrator notes that in accordance with Swiss procedural law and CAS jurisprudence, such as CAS 2016/O/4504 with further references, illegally obtained evidence is not automatically inadmissible in CAS proceedings and undertaking an examination of a balance of interests is always necessary. In any case, the Sole Arbitrator notes that with regards to the evidence based on the police of Ukraine’s tapping of telephone conversations, the Appellant has failed to show why the records from the telephone conversations were illegally obtained. Article 387 of the Criminal Code of Ukraine states that disclosure of pre-trial investigation information is illegal if there is no written permission from the investigator or prosecutor. As the evidence was provided by the General Prosecution Office of Ukraine, it must be assumed that the disclosure of the information does not constitute a breach of Article 387 of the Criminal Code of Ukraine. The records from the telephone conversations are as such admissible.
83. In his Appeal Brief, the Player requests that the Federbet reports are excluded as evidence in this case, due to their inappropriateness and collection in violation of the principle of objectivity. The Sole Arbitrator notes that the Player has failed to substantiate why the Federbet reports should be excluded as evidence, and that there are no indications that the reports are biased. The Federbet reports are admissible.
84. Before CAS, the UAF has not offered testimonies of anonymous witnesses. As such, the Player’s request to exclude the testimony of the anonymous witness from the list of evidence in the case has not been considered.

#### **IX. MERITS**

##### **A. Legal framework - The Main Issues**

85. In accordance with Article R57 paragraph 1 of the CAS Code, the Sole Arbitrator has “full power to review the facts and the law”. Pursuant to CAS jurisprudence, including

CAS 2007/A/1394 and CAS 2018/A/6075, CAS appeals arbitration procedures require a de novo review of the merits of the case, and are not limited to deciding whether the appealed decision was correct.

86. With regards to the issues of the burden of proof and the standard of proof, the Sole Arbitrator notes that it is not disputed that in disciplinary matters of this kind the burden of proof lays with the regulatory body, i.e. the UAF.
87. The Sole Arbitrator notes that the UAF Regulations that have been provided as evidence in this proceeding do not explicitly regulate the standard of proof. However, the Appealed Decision applies a “*comfortable satisfaction*” standard, based on CAS jurisprudence. This approach has not been contested by the Player, and is accepted by the UAF. The principle of comfortable satisfaction as standard of proof has been consistently upheld in CAS jurisprudence regarding match-fixing cases and has been defined as being “*greater than a mere balance of probability but less than proof beyond a reasonable doubt*” (CAS 2017/A/5338, paragraph 64, and CAS 2020/O/6689, paragraph 252).
88. On this background, a conviction of the Player requires that the UAF has proven, to the Sole Arbitrator’s comfortable satisfaction, that the Player is guilty of having breached the relevant match-fixing provisions in the UAF Disciplinary Regulations and the UAF’s Code of Ethics.
89. The Respondent’s claim that the Player is guilty of having committed violations of the UAF Code of Ethics and the UAF Disciplinary Rules regarding match-fixing, as concluded in the Appealed Decision, is based on the following alleged circumstances:
  1. The Player participated in manipulated matches.
  2. The Player is guilty of manipulating or failing to report manipulation of one or more matches he participated in.
90. Based on the circumstances of the case and its established facts, the Sole Arbitrator observes that the main issues to be resolved are the following:
  - i. Has the Player participated in one or more matches that have been manipulated?
  - ii. Is the Player guilty of manipulating, or failing to report manipulation, of one or more matches he participated in?
  - iii. If the Player is guilty of manipulation of one or more matches or failing to report manipulation, what is a proportionate sanction?
91. The Sole Arbitrator will address these issues in turn below.

**i. Has the Player participated in one or more matches that have been manipulated?**

92. The Sole Arbitrator notes that the Appealed Decision does not only concern the Player. In the Appealed Decision, FC Sumy, as well as 11 other persons affiliated with FC Sumy, including the Player, were sanctioned for having breached the UAF's regulations with regards to match manipulation.
93. The Sole Arbitrator notes that match-fixing is prohibited by UAF's regulations. The 2012 and 2016 versions of the UAF Disciplinary Rules state that the manipulation of match results is a violation that can lead to a disciplinary sanction. Manipulation of match results is defined in both versions of the regulations as "*any influence or conspiracy to change the outcome of the match*" and "*any proposals to encourage the team, individual or group of players (representatives of the club, team) in any form to achieve the result of the match in the interests of a third party*".
94. In accordance with the 2015 version of Article 6.1 of the UAF Code of Ethics, a person who discovers a proposal of bribery shall immediately report it to the respective governmental or football bodies in charge. The 2018 version of Article 8 of the UAF Code of Ethics specifically bans bribery and corruption.
95. Central for the assessment of whether the Player has participated in one or more matches that have been manipulated, or failed to report manipulated matches, is the report from the UAF's Ethics Committee dated 14 November 2018, where the UAF Ethics Committee concluded that at least 20 matches between 2013 and 2018 involving FC Sumy were manipulated. Of those 20 matches, it is undisputed that the Player participated in four matches:
- FC Nyva Ternopil v FC Sumy played on 25 November 2013 ("Match 1")
  - FC Desna Chernigiv v FC Sumy played on 15 September 2017 ("Match 2")
  - FC Sumy v. FC Desna Chernigiv played on 22 April 2018 ("Match 3")
  - FC Cherkasy Dnipro v FC Sumy played on 19 May 2018 ("Match 4")
96. Based on the findings of the Appealed Decision, a main issue is whether one or more of the four matches where the Player participated were manipulated. Such assessment will have to be conducted on a case-to-case basis for each of the four matches in question.
- a. Match 1 FC Nyva Ternopil v FC Sumy played on 25 November 2013**
97. After this match, where the Player played as a defender and FC Sumy lost 2:0, a UEFA BFDS report showed irregular betting patterns associated with the match. It was summarised in the UEFA BFDS report that "*[t]here was suspicious pre-match betting for FC Sumy to lose the match, leading large numbers of bookmakers to withdraw their markets prematurely. The betting patterns observed cannot be justified and the BFDS believe it is possible that this match was manipulated for betting purposes by FC Sumy*".

**b.** Match 2: FC Desna Chernigiv v FC Sumy played on 15 September 2017

98. In Match 2, in which the Player played as defender, FC Sumy lost 3:0. A UEFA BFDS report subsequently described irregular betting patterns associated with the match. It was summarised in the UEFA BFDS report that “[t]here is clear and overwhelming betting evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits. The betting evidence ultimately indicates that bettors held prior knowledge of FC Sumy losing the match by at least three clear goals.”

**c.** Match 3: FC Sumy v. FC Desna Chernigiv played on 22 April 2018

99. In Match 3, the Player was FC Sumy’s defender for the match which FC Sumy lost 2:0. On 7 September 2018, the UAF received a report from Federbet concerning irregular betting patterns associated with the match. It was summarised as follows: “FC ‘Sumy’ is involved in at least six matches with unrealistic odds movement. In all cases the manipulation occurred on the Asian market, which allows to place large quantity of money, and sometimes also in European bookmakers. In many matches the bookmakers decided to suspend the markets and this happen only when the anomalies are clear. Generally the evidences are clear in both phases, in every market analyzed. In all six cases the matches registered suspicious movements against FC ‘Sumy’ Sumy, very often with their loss with handicap and all related bets about the numbers of goals scored. In all the cases the index risk is 5/5.”
100. The letter dated 1 November 2018 sent from the General Prosecution Office of Ukraine addressed to the UAF Ethics Committee, reveals that two telephone conversations took place between the director of FC Sumy and one of FC Sumy’s players, Mr Lugovyy, regarding Match 3. The first telephone conversation took place the same day Match 3 was played, and confirms that there was an agreement to manipulate the match. The second telephone conversation took place four days later, 26 April 2018, where the club director confirmed that he had transferred UAH 100,000 to Mr Lugovyy for losing Match 3.
101. The letter from the General Prosecution Office of Ukraine also reveals that UAH 100,000 had been transferred from the bank account of the club director to the bank account of the Mr Lugovyy, and that money had been transferred from the bank account of Mr Lugovyy to bank accounts of two of his team mates.

**d.** Match 4: FC Cherkasy Dnipro v FC Sumy played on 19 May 2018

102. In Match 4, the Player played as a defender for FC Sumy. At half time the score was 1:2, when the match was abandoned due to a pitch invasion by supporters. A UEFA BFDS report was produced, and showed irregular betting patterns associated with the match. It was summarised in the UEFA BFDS report that “[t]here is clear and overwhelming betting evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits. The betting evidence ultimately indicates that bettors held prior knowledge of FC Sumy losing the match and at least two goals being scored in the first half.”

103. The conclusion of the UAF Ethics Committee dated 14 November 2018 that at least 20 matches involving FC Sumy had been manipulated, is, to a large degree, based on reports from the UEFA BFDS and Federbet. In this regard the Sole Arbitrator notes that reports from the UEFA BFDS and Federbet must be considered as reliable means of evidence to prove that matches have been manipulated, as established in several cases before CAS, including CAS 2018/A/6075, paragraph 52, and CAS 2017/A/5338, paragraph 101.
104. Based on the documents presented by the Parties, in particular the report from the UAF Ethics Committee dated 14 November 2018, where the UAF Ethics Committee concluded that at least 20 matches between 2013 and 2018 involving FC Sumy had been manipulated, the four reports from the UEFA BFDS and Federbet that clearly indicate that four listed matches in which the Player participated indeed were manipulated, and the letter from the General Prosecution Office of Ukraine which reveals telephone conversations and money transfers related to the manipulation of matches, it is firmly established that the club FC Sumy indeed has played matches that have been manipulated, i.e. that is covered by the UAF Disciplinary Regulations definition of match manipulation, “*influence or conspiracy to change the outcome of the match*” and “*any proposals to encourage the team, individual or group of players (representatives of the club, team) in any form to achieve the result of the match in the interests of a third party*”. It is further established that the Player has participated in four of those matches.

**ii. Is the Player guilty of manipulating or failing to report manipulation of one or more matches he participated in?**

105. The Sole Arbitrator notes that neither the Appealed Decision or the decision of the UAF DC specify which of the four listed matches, in which he played, the Player was found guilty of manipulating. In the decision from the UAF DC, it is noted that the Player’s mistakes in Match 1 were specifically described in the UEFA BFDS report regarding the game. Further, the decision from the UAF DC describes the Player’s role in Match 3.
106. The Sole Arbitrator notes that although it is undisputed that the Player participated in Match 2 and 4, no evidence indicates that the Player manipulated either of these matches or that he was aware that the matches were manipulated. As such, the Sole Arbitrator is not comfortably satisfied that the Player is guilty of having breached the relevant match-fixing provisions with regards to Match 2 and 4.
107. The UEFA BFDS report for Match 1 showed irregular betting patterns and suspicious pre-match betting for FC Sumy to lose the match, and the UEFA BFDS concluded that it was “*possible that the match was manipulated for betting purposes*”.
108. The Player’s role in Match 1, where he was the captain of FC Sumy, is described in the UEFA BFDS report:

*“FC Sumy captain Taras Duraj received a straight red card in injury time, reportedly for violent conduct. Whilst a lack of comprehensive video evidence makes it difficult for the*

*BFDS to accurately assess these incidents, they must be documented as potentially of concern as individuals attempting to manipulate matches often employ tactics such as conceding penalties and getting sent-off, since this ultimately increases the probability that they will lose. With this in mind, it is interesting that Taras Duraj was formerly a FC Nyva Ternopil player and in fact has spent much of his career at the club.”*

109. The Sole Arbitrator notes that the UEFA BFDS report indicates that the match was likely manipulated for betting purposes. However, the Sole Arbitrator stresses that the circumstance that a match is considered manipulated for betting purposes is only the first step in deciding whether a player, with comfortable satisfaction, is to be considered directly or indirectly involved in such match manipulation.
110. The UEFA BFDS Match Report for Match 1 is therefore not in itself, and without further documentation or evidence, sufficient to establish a link between the manipulated match and the Player.
111. Further, the UEFA BFDS report clearly indicates that the Player, by being sent off, increased the chances of FC Sumy conceding goals. The Sole Arbitrator notes in this connection that it cannot be ruled out that the Player, in that situation, might have acted differently. That said, players frequently make mistakes in football matches, and it must be assumed that the vast majority of mistakes are unrelated to match manipulation. Further, there are no other circumstances documenting or indicating that the Player was involved in match manipulation with regards to Match 1.
112. Against this background the Sole Arbitrator does not find that it can be established with comfortable satisfaction that the conduct of the Player in Match 1 must be assumed to be linked with match manipulation. On this basis, the Sole Arbitrator finds that the UAF has failed to adequately discharge its burden of proof to establish with comfortable satisfaction that the Player was involved in the manipulation of Match 1.
113. Further, it can neither be established to the Sole Arbitrator’s comfortable satisfaction that the Player was aware that Match 1 was manipulated. Consequently, the UAF has failed to adequately discharge its burden of proof to establish with comfortable satisfaction that the Player has failed to report manipulation of Match 1.
114. In relation to Match 3, the Player’s role is described in the 14 November 2018 Report of the UAF Ethics Committee as follows:

*“Together with the goalkeeper, the central defenders of FC «Sumy» - [the Player] №33 and Dmytro Bogachov №16 acted in a rather incomprehensible way. [the Player] lost the ball in several episodes «on an equal footing», acted passively in the selection and did not intercept. One such episode took place in the 53rd minute of the match. Number 99 FC «Sumy» - Mykola Kvasnyi transfers to [the Player]. FC «Desna» players are far from the defender of FC «Sumy», and the latter has a lot of time to make any decision, for example, to continue the attack on the right flank. However, he begins to process the ball for a long time, as a result of which two rivals get closer to him. [the Player], instead*

*of giving the transfer, begins to play them (in the central part of the field, being the central defender). As a result, he loses the ball. The player of FC «Desna», who took possession of the ball, has space in front of him and two teammates at once, to whom he can give a pass. A few minutes later a similar moment occurs, but this time in close proximity to the penalty area. [the Player] covers the ball with the body and leads to the corner flag. The FC «Desna» player is behind him. The opponent starts to run around [the Player], and the latter allows him to do so. The ball goes to the FC «Desna» player, but in the fight against [the Player] he falls and loses it. [The Player] knocks the ball out, but does so weakly and the ball is almost intercepted by a FC «Desna» player. The whole episode is accompanied by passive actions on the part of [the Player].*

(...)

*Based on the above events, the Expert Group, for the most part, concludes that by their actions (actions and inactions) such players of the FC «Sumy» team as Dmytro Bogachov (№16), Mykola Vechurko (№6), [the Player] (№33), Irakli Tsykolia, (№44), Anatoliy Starushchenko (№66), Yegor Luhovyi (№14) violated the basic principles of the Code of Ethics and Fair Play regarding the honesty and principle of martial arts, respect for spectators, as well as paragraphs 16, 20 of Art. 2 of the Disciplinary Rules of the Football Federation of Ukraine.”*

115. Further, the Player’s role in relation to Match 3 is described in the letter from the General Prosecution Office of Ukraine dated 1 November 2018. More specifically, the Player is mentioned in two telephone conversations that took place 22 April 2018 and 26 April 2018, between the director of the FC Sumy and one of the FC Sumy’s players, Mr Lugovyy. In the first telephone conversation, Mr Lugovyy informed the club director that the Player was among the FC Sumy players that knew “*about the agreement*” to intentionally lose the match. In the second telephone conversation four days later, the club director confirmed that he had transferred UAH 100,000 to Mr Lugovyy for losing the match. Mr Lugovyy told the club director that the Player would receive UAH 15,000. The report further states that apart from bank transfers from Mr Lugovyy to two of the players, “*the money was transferred to the players only in cash*”.
116. The Sole Arbitrator notes that the UEFA BFDS report reveals several situations where the Player acted “*incomprehensible*” in situations that increased the opponent club’s chances of scoring. As mentioned above, the vast majority of mistakes made by football players are unrelated to match manipulation. However, the Player’s conduct, as described in the UEFA BFDS report, must be seen in connection with other evidence and indications that he did manipulate the match for betting purposes.
117. The Sole Arbitrator notes that Mr Lugovyy and the club director were unaware that the police were monitoring their telephone conversations, and Mr Lugovyy had no incentive to lie about the Player’s role in connection with Match 3. As such, the information provided by Mr Lugovyy in this telephone conversation must be considered as reliable.



118. Further, the police established that the discussed amount of UAH 100,000 was transferred from the club director to the bank account of Mr Lugovyy, an amount that apparently was intended for further distribution to other involved players. Of this amount, the police established that Mr Lugovyy made two bank transfers of a total of UAH 40,000. The report states that *“money was transferred to other players only in cash”*.
119. The Sole Arbitrator notes that the reliability of the information in the telephone conversation is supported by the subsequently established money transfers, as the money transfers correspond with the information given in the telephone conversations. As such, the information disclosed about the Player in the two telephone conversations that took place on 22 April 2018 and 26 April 2018, i.e. that the Player knew *“about the agreement”* to intentionally lose the match and that the Player would receive UAH 15,000 of the total amount of UAH 100,000 that was transferred after the match, must be considered as reliable. As UAH 60,000 of the total amount allegedly was paid in cash to the involved players, lack of evidence establishing that the Player actually received the alleged payment cannot be decisive for the conclusion of whether the Player took part in match-fixing activities in Match 3. In any case, the Sole Arbitrator notes that receiving payment is not a condition for violating the UAF Code of Ethics or the 2016 UAF Disciplinary Rules regarding match-fixing.
120. After carefully considering the evidence presented by the Parties, including the report from the UAF Ethics Committee dated 14 November 2018, the UEFA BDFS Report and the letter from the General Prosecution Office of Ukraine received by the UAF on 1 November 2018 which reveals telephone conversations where the Player is identified as one of the players involved in match manipulation, as well as money transfers where the Player is identified as one of the intended recipients, the Sole Arbitrator is comfortably satisfied that the Player contributed to manipulating Match 3 in a manner that is covered by the definition of match manipulation in Article 20 paragraph 1.1 and 1.2 of the 2016 UAF Disciplinary Regulations, i.e. *“any influence or conspiracy aimed to change the outcome of the match”* and *“any proposals to encourage the team, individual or group of players (representatives of the club, team) in any form to achieve the result of the match in the interests of a third party”*.
121. Further, the Sole Arbitrator finds that the Player’s has violated Article 8 of the UAF Code of Ethics, as his conduct, as described above, falls under the article’s definition of bribery and corruption, as the Player has accepted *“directly or indirectly any unjustified financial assistance or other benefit in any form in order to influence the actions or inaction within its own competence”*.
122. Against this background, the Sole Arbitrator concludes that it has been proven, with comfortable satisfaction, that the Player’s conduct, as described above, is in violation of Article 2 paragraph 2-9 of the 2016 UAF Disciplinary Regulations, *“participation or attempt to participate in corruption”*, Article 2-14, *“manipulation of match results”* and Article 2-20, *“any other actions that may influence the occurrence of the match or its result”*, as well as Article 8 of the UAF Code of Ethics.

**iii. If the Player is guilty of manipulation of one or more matches or failing to report manipulation, what is a proportionate sanction??**

123. As the Player is found to have breached Article 2 of the 2016 UAF Disciplinary Regulations and Article 8 of the UAF Code of Ethics, he is liable to be sanctioned in accordance with Article 5-2 of the 2016 UAF Disciplinary Regulations, which states:

*“A disciplinary sanction shall be imposed taking into account all the circumstances of the case, given the gravity of the violations, the form and degree of guilt (except in cases of liability regardless of fault), the characteristics of the person to whom the disciplinary sanction is applied. The sanction must be appropriate to the unlawful act and consistent with the aim of preventing future violations.”*

124. Further, Article 6 (2.7) of the 2016 UAF Disciplinary Regulations states that the following sanction may be imposed:

*“Ban on taking part in any football-related activity (administrative, sporting, etc.)”.*

125. The 2016 UAF Regulations do not specify how to determine the sanction that should be imposed. In the absence of any guidance in the UAF regulations as to particular objective and subjective circumstances to be taken into account in determining an appropriate sanction from the wide range of sanctions provided for, the Sole Arbitrator, in determining an adequate sanction to be imposed, relies partly on his de novo competence to review the case and the sanctions imposed in other comparable match-fixing cases before the CAS.

126. The Sole Arbitrator agrees with the UAF that CAS in general should amend a disciplinary decision only in cases in which the imposed sanction is considered to be evidently and grossly disproportionate to the offence, as concluded in CAS 2009/A/1817 and CAS 2009/A/1844.

127. As a starting point, the Sole Arbitrator finds that the UAF DC and the UAF AC, following a measured analysis as to the proportionality of the sanction, considered a three-year ban from all football related activities appropriate. However, neither the Appealed Decision or the decision from the UAF DC specify how many matches the Player is found to have manipulated. In both decisions, the Player’s conduct in two matches is described, and it is natural to assume that the UAF DC and the UAF AC have based their considerations with regards to the length of the ban on an assumption that the Player had conducted match-fixing activities in two matches. The fact that the Sole Arbitrator has concluded that the Player is found to have manipulated only one match indicates that the sanction imposed by the UAF DC and the UAF AC could be too strict. On the other hand, the damage the Player has caused the sport of football through his match-fixing activities is substantial regardless of whether he has manipulated one or two matches. When determining the sanction, however, it is natural to look to CAS jurisprudence where players have been found to have manipulated one match.

128. In the case CAS 2018/A/5906, a player was banned from all football-related activities for ten years for accepting a bribe in relation to one match. In the case CAS 2018/A/5920, a player was banned for seven years for failing to report an approach and failing to report behavior that was in breach of match-fixing provisions in the UEFA Disciplinary Regulations. In the case CAS 2018/A/5800, a player was banned from football-related activities for two years for failing to report that he had been approached in connection with match-fixing activities, although the player was not found to have manipulated a match. These decisions indicate that a three-year ban for having manipulated one match is not too strict.
129. The Sole Arbitrator notes that match-fixing must be regarded as a violation of a very serious nature. Match-fixing must be considered particularly damaging for the reputation of football in general, as it jeopardizes the integrity of the sport. Indeed, the damaging impact of match-fixing violations on the attraction of sport is reflected in the abovementioned decisions from CAS. Against this background, breaching match-fixing provisions in general calls for a strict sanction. By taking part in match-fixing activities, the Player has damaged the reputation of the sport of football.
130. On this background, the Sole Arbitrator finds that a three-year ban is proportionate and appropriate, and that such a ban is justifiable to reflect the severity of the violation committed by the Player.
131. Consequently, the Sole Arbitrator holds that the Appealed Decision is to be confirmed.

## **B. Conclusion**

132. In light of the foregoing, and after taking due consideration of all the evidence produced and all arguments made, the Sole Arbitrator finds that:
1. The Player is guilty of violating Articles 2 paragraphs 2-9, 2-14, and 2-20 of the 2016 UAF Disciplinary Regulations, as well as Article 8 of the UAF Code of Ethics.
  2. The imposition on the Player of a three-year ban from taking part in any football-related activity is appropriate.

## **X. COSTS**

(...).

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## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Taras Durai on 13 April 2021 against the decision of the Ukrainian Association of Football Appeals Committee of 1 December 2020 is dismissed.
2. The decision of the Ukrainian Association of Football Appeals Committee of 1 December 2020 is confirmed.
3. (...).
4. (...).
5. All other and further motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 18 April 2023

**THE COURT OF ARBITRATION FOR SPORT**

Espen Auberg  
Sole Arbitrator